HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO. 26939 OF 2003

Between:

Munagala Rama Mohan Rao

..... Petitioner

AND

Government of India,
Rep. by its Deputy Secretary,
Ministry of Home Affairs,
Freedom Fighters Division,
New Delhi & others

.....Respondents

:: O R D E R::

Counsel for the petitioner : Mrs. A. Chaya Devi

Counsel for respondent Nio.1 : Shri A. Rajashekar Reddy, Assistant Solicitor General

Counsel for respondent Nos.2 and 3: Assistant Government Pleader for Revenue

Dated: 24.10.2006

In this petition, the petitioner has prayed for issue of a mandamus to the respondents to grant pension to him under Swatantrata Sainik Samman Pension Scheme, 1980 (for short 'the 1980 Scheme'). By way of amendment, for which leave was granted by the Court on 12.09.2006, the petitioner has prayed for quashing communication dated 21.02.2005 sent to him by Under Secretary to Government of India, Ministry of Home Affairs rejecting his claim for pension.

The petitioner's claim for grant of pension under the 1980 Scheme is founded on his assertion that he had participated in Quit India Movement and remained underground for more than six months pursuant to arrest warrant dated 15.08.1942 issued in Criminal Case No.145 of 1942. In February 1982, he is said to have applied for grant of pension under the 1980 Scheme. After a lot of correspondence and getting an enquiry conducted through Collector, Guntur, the State Government forwarded his case to the Central Government, but the latter did not take any action necessitating filing of writ petition by the petitioner.

During the pendency of the writ petition, the Government of India considered the petitioner's claim for grant of pension and rejected the same on the ground that he failed to produce acceptable primary documentary evidence to establish his jail suffering or his having remained underground for a period of six months. This is evinced from paragraphs 3, 3.1, 3.2, 4.1 and 4.2 of

communication dated 21.02.2005, which are reproduced below:

> " After examination of the case, it is found that you are not eligible for the grant of SSS Pension due to the following short comings:-
>
> You have failed to produce acceptable primary documentary evidence to establish your jail sufferings by producing a copy of jail certificate from the concerned jail authority, District Magistrate or the State Government, indicating the period of sentence awarded etc. You have also not produced any acceptable documentary evidence to establish your underground sufferings by way of producing a copy of the order declaring yourself as a) a proclaimed offender; b) one on whom an award for arrest was announced; or (c) one for whose detention order was issued but not served etc.
>
> In the absence of the official primary documentary evidence, you have failed to submit the requisite secondary evidence of 'NARC' as stated in para 2 above.
>
> Any secondary evidence like CPC/PKC can be considered only in conjunction with an acceptable NARC.
>
> However, the PKCs submitted by you have been scrutinized, but these are also not acceptable for the reasons mentioned below:
>
> (i) Personal Knowledge Certificates (PKCs) of S/Shri Mellacheruvu Anjaneyasastry, Tavva Sriramulu, Potaraju Rama Murthy, Yallapragada Sita Pati Rao and A. Kameswara Rao are not acceptable, as the certifiers did not mention any reason of your absconsion;
>
> (ii) S/Shri Potaraju Rama Murthy and Y. Sita Pati Rao had also certified that you absconded and were also externed/interned during the same period; and
>
> (iii) They had also not furnished any evidence of their own jail sufferings for a period of two years or

more."

Smt. A. Chaya Devi, learned counsel for the petitioner lamented that the application made by her client in 1982 for grant of pension under the 1980 Scheme was kept pending for a period of 23 years and the same has now been rejected without assigning cogent reasons. Learned counsel systematically dissected communication dated 21.02.2005 and argued that refusal of respondent No.1 to accept Non-availability of Record Certificate (NARC) issued by II Additional Munsif Magistrate, Tenali should be treated as extraneous to the 1980 Scheme. She invited my attention to Memo No.58488/FF.II/A2/2001 dated 28.06.2001 issued by the Government of Andhra Pradesh to show that NARC issued by the concerned jail and Munsif Magistrate Court has been duly recognized by the State Government and submitted that the Government of India could not have refused to entertain the certificate on the spacious ground that the same had not been issued by the State Government. According to the learned counsel, the authorization given by the Government of Andhra Pradesh to the jail authorities and Munsif Magistrate to issue NARC confers legitimacy on such certificates and the same have to be treated as the certificates issued by the competent authority of the State Government. She further argued that the Personal Knowledge Certificates (PKC) issued by five freedom fighters namely Shri Mellacheruvu Anjaneya Sastry, Shri Tavva Sriramulu, Shri Pothuraju Rama Murthy, Shri Yellapragada Seethapathy Rao and Shri Annapragada Kameshwar Rao were sufficient to prove the petitioner's claim that he had

remained underground for a period of more than six months in connection with Quit India Movement and rejection thereof is liable to be invalidated. Smt. Chaya Devi then submitted that the rejection of the evidence produced by the petitioner in support of his claim for grant of pension under the 1980 Scheme on hyper-technical ground should be invalidated and a mandamus be issued to the respondents to pay him pension.

Shri A. Rajashekar Reddy, learned Assistant Solicitor General justified the rejection of the petitioner's claim for grant of pension under the 1980 Scheme and argued that even though one of the reasons enumerated in para 3.1 of the impugned communication may be treated as irrelevant, the decision contained therein cannot be annulled because the petitioner failed to produce primary or acceptable secondary evidence to substantiate his claim of having remained underground for a period of six months.

I have considered the respective submissions and carefully scanned the entire record including the original files produced by the learned Assistant Solicitor General and the learned Assistant Government Pleader for Revenue for which direction was given by the Court on 10.10.2006.

At the outset, it is apposite to mention that the petitioner has not claimed pension on the premise that he had been jailed in connection with the freedom movement. Therefore, the statement contained in para 3.1 of communication dated 21.02.2005 that the petitioner had failed to produce acceptable primary documentary evidence to establish his jail suffering cannot but be treated as

extraneous and irrelevant. This also reflects utter non-application of mind by the officer who was entrusted with the task of deciding the petitioner's claim for pension.

The decision of Government of India to discard NARC produced by the petitioner is also legally unsustainable because, -

(i) The scheme framed by the Government of India does not, in so many words, require production of NARC issued by any particular authority of the State Government. Therefore, stipulation contained in the executive instructions issued by the department that NARC must be issued by the State Government is liable to be ignored.

(ii) The NARC issued in favour of the petitioner by the Munsif Magistrate was in consonance with memo dated 28.06.2001 issued by the Government of Andhra Pradesh and the same will be deemed to have been issued by the competent authority of the State Government.

The issue which remains to be considered is whether PKCs. issued in favour of the petitioner by five freedom fighters can be made basis for recording a finding that he had remained underground for six months. The policy framed by the Government of India not only lays down the conditions of eligibility, but also prescribes the nature of evidence which can be produced by the claimant. In terms of para 2 and its sub-paras, a person can produce NARC along with PKC to show that he had remained underground pursuant

to a proclamation issued by the competent Court or a reward announced by the Government for his arrest on account of the issue of warrant of arrest. In support of his claim, the petitioner had produced certificate dated 20.10.2001 issued by Mellacheruvu Anjaneya Sastry, who is said to have been lodged in Allipuram jail (Tamilnadu) from 18.09.1942 to 27.09.1943 and again from 10.05.1944 to 10.11.1944. According to him, the petitioner remained underground from 15.08.1942 to 20.02.1943. Later on, he produced certificates issued by Shri Yallapragada Seethapati Rao, who is said to have remained in Allipuram Jail, Bellary from 02.01.1943 to 30.03.1946. Other certificates produced by the petitioner were issued by Jaladi Satyanarayana, Potharaju Rama Murthy, Annapragada Kameswara Rao all of whom are said to have remained in jail for more than two years in connection with freedom movement. These certificates show that the concerned persons have certified underground suffering of the petitioner in relation to the period during which they were in jail. It is beyond comprehension of a man of reasonable prudence as to how a person undergoing imprisonment could know that another person was underground during the same period except when some contemporaneous evidence is produced by the author of the certificate to show that while in jail, he was having connection with the persons who were underground. In the certificates produced by the petitioner, none of the freedom fighters has stated that while in jail, he was having connection with the petitioner, who was

underground. Therefore, the last reason assigned by the concerned authority of Government of India for refusing to entertain the petitioner's claim as a freedom fighter cannot be termed as extraneous or irrelevant warranting invalidation of the decision contained in communication dated 21.02.2005.

The upshot of the above discussion is that even though two of the reasons assigned by the Government of India for refusing to entertain the claim of the petitioner are legally untenable, the petitioner's prayer for quashing communication dated 21.02.2005 and issue of a mandamus to the respondents to grant pension to him cannot be entertained because he has failed to produce tangible evidence to substantiate his claim of having remained underground for a period of six months.

In the result, the writ petition is dismissed.

G.S.SINGHVI, CJ

24.10.2006
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